

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re Applications of)

MM Docket NO. 93-216)

DOUBLE W, INC.)

File No. BPH-920506MD)

DON TIMMERMAN BROADCASTING, INC.)

File No. BPH-920507MA)

For Construction Permit for a
New FM Station on Channel 253
in Cedar Falls, Iowa)

RECEIVED

AUG 30 1993

To: The Honorable Joseph Stirmer
Chief Administrative Law JudgeFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**SUPPLEMENT TO JOINT MOTION FOR
APPROVAL OF SETTLEMENT AGREEMENT**

Double W, Inc. ("Double W") and Don Timmerman Broadcasting, Inc. ("Timmerman"), by their attorneys, hereby petition for approval of their settlement agreement filed August 11, 1993 as supplemented by the attached shareholders' agreement.^{1/}

1. The parties are merging to form a new company, Thin Air Investments, Inc. ("Thin Air") whose principals are those set forth in the August 11, 1993 Joint Motion. Simultaneously with the filing of this Supplement, Double W is filing a petition for leave to amend its application to substitute Thin Air as the applicant. A revised legal section of the FCC Form 301 application is attached to the amendment. The amendment also includes a modified engineering proposal. Thin Air is proposing to locate its antenna on an existing tower so as to initiate

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^{1/} It is respectfully requested that the Presiding Judge continue to stay all procedural dates pending action on the Joint Motion and the Petition for Leave to Amend being filed today by Double W.

service to Cedar Falls, Iowa at an earlier date than otherwise possible.

2. Approval of the proposed merger will serve the public interest by eliminating unnecessary litigation, conserving the resources of the parties and the Commission and facilitating the initiation of a new FM service to Cedar Falls, Iowa. Both parties have submitted Declarations with the August 11, 1993 Joint Motion stating that they did not file their applications for the purpose of reaching a settlement.

3. For the foregoing reasons, the parties respectfully request the Presiding Judge to issue an Order:

- (a) Approving the settlement agreement between Double W and Timmerman.
- (b) Granting the application of Double W as amended to substitute Thin Air Investments, Inc. as the applicant and to include a modified engineering proposal.
- (c) Dismissing the application of Timmerman with prejudice.

Respectfully submitted,

DOUBLE W, INC.

Fisher, Wayland, Cooper
and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

By: Kathryn R. Schmeltzer
Clifford M. Harrington
Kathryn R. Schmeltzer

Its Attorneys

DON TIMMERMAN
BROADCASTING, INC.

550 Prestien Drive
Denver, Iowa 50622

By: _____
Don Timmerman
President

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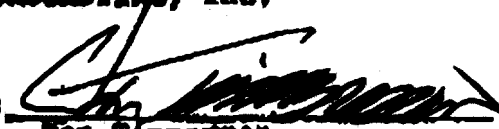
DOUBLE W, INC.

Fisher, Wayland, Cooper
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1255 23rd Street, N.W.
Suite 800
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(202) 659-3494

By: Clifford M. Harrington
Kathryn R. Schmeltzer

Its Attorneys

DON TIMMERMAN
BROADCASTING, INC.

By: 
Don Timmerman
President

550 Preston Drive
Denver, Iowa 50622

END

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SHAREHOLDER AGREEMENT
CONCERNING TRANSFER OF STOCK

This Agreement is entered into as of this 20th day of August, 1993, by and between A. Miller Roskamp, Donald E. Timmerman, Steven A. Winkey, Diane M. Winkey, Richard J. Witham and Junean E. Witham, hereinafter collectively referred to as the "Shareholders", and Thin Air Investments, Inc., hereinafter referred to as the "Company", as follows:

RECITALS

A. The Shareholders own all of the outstanding stock of the Company in the proportions and in the amount set forth opposite their names below:

A. Miller Roskamp	-	180 shares
Donald E. Timmerman	-	180 shares
Steven A. Winkey	-	160 shares
Diane M. Winkey	-	160 shares
Richard J. Witham	-	160 shares
Junean E. Witham	-	160 shares

B. The Shareholders and the Company believe that it is to their mutual best interest to provide for continuity and harmony in management of the Company.

C. It is the intent of the Shareholders and the Company to provide for the purchase by the Company or the surviving shareholders of a deceased Shareholder's stock interest and to provide for the purchase by the Company or the surviving shareholders of a Shareholder's shares should any of the Shareholders desire to sell their stock during their lifetime, or if there should be an involuntary transfer.

D. It is not the intent of the Shareholders to restrict the transfer of stock by a Shareholder to a spouse or children of a Shareholder, either during lifetime or at time of death.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and for other valuable consideration, receipt of which is hereby acknowledged, it is mutually agreed and covenanted by and between the parties to this agreement as follows:

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ARTICLE 1. LIFETIME TRANSFERS OF STOCK:

1.1. Shareholders shall not, during their lifetime, transfer, encumber or dispose of any portion or all of their stock until the shareholder shall have first given notice to the Company of such intention. The notice must name the proposed transferee and specify the number of shares to be transferred, the price per share, and the terms for payment. Upon receipt of the notice, the secretary of the Company shall forward a copy of the notice to each member of the Company's board of directors who shall meet and consider the proposed transfer. For forty-five (45) days following notice to the Company, the Company shall have the option to purchase the shares at the price and on the terms stated in the notice or at the price determined in the same manner as is provided in Article 4 of this agreement, whichever price is lower.

1.2 If the Company exercises its option within the forty-five (45) day period, the secretary of the Company shall give notice of that fact to the offering Shareholder. The Company shall pay the purchase price, as determined by the preceding paragraph, either in accordance with the terms set forth in the notice or or in accordance with the procedure established in Article 5 of this agreement, as may be determined by the Company to be the most advantageous.

1.3 If the option is not exercised by the Company as to all shares set forth in the notice of intention to transfer to a third party, then within the forty-five (45) day period, notice of the proposed transfer in the same form as the notice given to the Company shall be given immediately to the remaining Shareholders who shall, for a period of fifteen (15) days, have the option to purchase any shares not purchased by the Company at the price and upon the same terms and conditions as specified in the notice, or the price determined in Article 4 of this agreement, whichever is lower, either in accordance with the terms set forth in the notice, or in accordance with the procedure established in Article 5 of this agreement, as may be determined by the purchasing Shareholder to be the most advantageous. Any Shareholder desiring to acquire any part or all of the shares shall deliver to the secretary of the Company a written election to purchase the shares or specified number of them, within fifteen (15) days after the mailing of notice to the Shareholders.

1.4 If the total number of shares specified in the election exceeds the number of available shares, each Shareholder shall have priority up to the number of shares specified in his

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notice of election to purchase to such proportion of the available shares as the number of the Company shares that he holds bears to the total number of the Company shares held by all Shareholders electing to purchase. The shares not purchased on such a priority basis shall be allocated in one or more successive allocation to those Shareholders electing to purchase more than the number of shares to which they have a priority right up to the number of shares specified in their respective notices in the proportion that the number of shares held by each of them bears to the number of shares held by all of them.

1.5 Within twenty-five (25) days after the mailing of the notice to the Shareholders, the Secretary of the Company shall notify each Shareholder of the number of shares as to which this election was effective and the Shareholder shall meet the terms and conditions of the purchase within fifteen (15) days thereafter. If the Company and Shareholders do not purchase all of the shares set forth in the notice of intention to transfer, all of the shares not purchased may be transferred anytime within one hundred twenty (120) days from the date of the notice and upon the terms specified in the notice.

1.6 The transferee will hold the shares subject to the provisions of this agreement. No transfer of shares shall be made after the end of the one hundred twenty (120) day period nor shall any change in the terms of transfer be permitted without a new notice of intention to transfer in compliance with the requirements of this article.

1.7 This article shall not apply to the transfer of stock by a Shareholder to a spouse or child of a Shareholder.

ARTICLE 2. DEATH OF SHAREHOLDER:

2.1 In the event of the death of a Shareholder, then the personal representative of the estate of the deceased Shareholder shall elect to either:

- A. Transfer the stock of the deceased Shareholder to the spouse and/or the children of the deceased, or
- B. Sell the stock of the deceased Shareholder to the Company or its remaining shareholders by following the procedures set out in Article 1 of this agreement.

2.2 The purchase price for the sale of stock pursuant to Section 2.1(B) shall be the price determined in Article 4.

2.3 The personal representative shall not, either through action or inaction, do anything with respect to the stock or make any transfer of the stock of the deceased Shareholder in such a fashion as would put in jeopardy the election of the corporation to be taxed in accordance with Chapter S, Internal Revenue Code Section 1371, as amended.

ARTICLE 3. INVOLUNTARY TRANSFER. In the event (a) a Shareholder's shares are involuntarily sold, transferred or otherwise disposed, or involuntary sale, transfer or disposal is threatened by any third party, or (b) a guardian or conservator is appointed for a Shareholder, or (c) a court order in connection with a property division in a divorce proceeding (collectively "involuntary transfer"), does not grant the Shareholder sole ownership of the shares, the Company and/or the other Shareholders shall have an irrevocable option to purchase any or all shares that are the subject of such involuntary transfer, and the Shareholder shall be deemed to have made an offer of sale to the Company and to the shareholders, and the Company and the Shareholders shall have the same rights to purchase the shares of stock of such involuntarily selling Shareholder on the same terms as though it was a lifetime transfer of stock described in Article 1 above. The right to purchase the stock of such a Shareholder shall be deemed to have arisen as of the later of the date of either the occurrence of the event creating the option to purchase or when the corporation's Board of Directors shall have notice of such event.

ARTICLE 4. PURCHASE PRICE: The purchase price to be paid for each of the shares subject to this agreement shall be determined as follows:

- A. The Shareholders shall annually agree upon the value of the Company. The initial agreed-upon value of the Company shall be determined within Ninety (90) days of the signing of this agreement. A new agreed-upon value for each share of the Company shall be determined by the Shareholders at the annual meeting of the corporation each year thereafter. The value agreed upon by the Shareholders shall be evidenced by placing their written and executed agreement in the minute book of the Company.

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- B. If the Shareholders are unable to agree upon a valuation, or if no new valuation has been agreed upon within one (1) year before the event requiring the determination of value, then the value of the selling Shareholder's interest shall be agreed upon by the selling Shareholder or his successor in interest and the remaining Shareholders. If the parties are unable to agree upon a value within thirty (30) days after the event requiring the determination, then the value of the Company shall be the greater of either the appraised market value of the Company's properties, including intangible properties, good will, going concern value, or the book value of the Company.
- C. The term "book value" shall mean the value for book value as determined by the accountants regularly servicing the Company's accounts, which determination shall be binding and conclusive upon the Shareholders and the Company. Such computation shall be made in accordance with generally accepted accounting principles, as consistently applied by the accountants during the operation of the business.
- D. If the Shareholders or the personal representative of a deceased Shareholder are unable to agree on a negotiated price, and if any Shareholder requests an appraisal, then the selling Shareholder and the Company, or the buying Shareholders shall, within ninety (90) days of the death, offer to sell or involuntary termination, each appoint an appraiser and those two (2) shall select a third appraiser. The three (3) appraisers so chosen shall, within thirty (30) days after the selection of a third appraiser, give the parties a written appraisal of the value of the Company. The average of the values determined by the appraisers shall be the sale value and shall be binding upon all parties. Each party shall pay the costs of the appraiser they select, and one-half (1/2) of the cost of the third appraiser. All appraisers shall be persons reasonably well acquainted with the ownership and operation of radio stations and to the extent possible, within the market area of the radio station operated by the Company.

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ARTICLE 5. METHOD OF PAYMENT: At the election of the Company if the Company is the purchaser or at the election of the purchasing Shareholder in the event a Shareholder is a purchaser of stock pursuant to the terms of this agreement, the purchase price shall be paid as follows:

- A. Not less than twenty percent (20%) of the purchase price in cash within One Hundred Twenty (120) days after the date of the death of a Shareholder or One Hundred Twenty (120) days after the date of a notice to sell is served pursuant to the provisions of Article 1 of this agreement.
- B. The balance of the purchase price shall be paid in five (5) equal consecutive annual payments beginning on the anniversary date of the payment made pursuant to the provisions of subparagraph A above, and on the same day each year thereafter, said payments being evidenced by a promissory note made by the Company or the buying Shareholder with interest at One per cent (1%) over the prime rate for corporate loans, as published in the "Money Rates" column of the Wall Street Journal on the last business day preceding the payment date. The interest rate shall be adjusted annually on the remaining balance as of the annual payment date. The note shall provide for the acceleration of the due date of the unpaid balance in the event of any default on the payment on any principal or interest thereon, and shall also provide the makers thereof the option of pre-payment in whole or in part at any time.
- C. Nothing contained herein shall prevent the parties from negotiating a different method of payment agreeable to the participants.

6. RESTRICTION AND LEGEND ON SHARE CERTIFICATES:

6.1 On execution of this agreement, each Shareholder shall have placed on the certificates representing their shares, a legend as follows:

Sale or transfer or hypothecation of the shares represented by this certificate are subject to the provisions of a Buyout agreement between the Shareholders of Thin Air Investments, Inc. dated August 20, 1993, a

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copy of which may be inspected at the principal office of the company, and all the provisions of which are incorporated by reference in this certificate."

6.2 None of the shares shall be transferred, encumbered or in any way alienated except under the terms of this agreement. Each Shareholder shall continue to have the right to vote their shares and receive the dividends paid on them until the shares are sold or transferred as provided in this agreement. A copy of this agreement shall be delivered to the secretary of the Company, and it shall be shown to any Shareholder or Shareholder's designee.

6.3 No Shareholder shall make any transfer or take any action or fail to take any action which would put in jeopardy the election of the corporation to be taxed in accordance with Chapter S, Internal Revenue Code Section 1371, as amended.

ARTICLE 7. TERMINATION OF AGREEMENT: This agreement shall terminate upon the occurrence of any of the following events:

A. The bankruptcy, receivership or dissolution of the Company;

B. The death of all Shareholders within a period of thirty (30) days;

C. When there survives only one Shareholder a party to this agreement;

D. The voluntary agreement of all the parties who are then bound by the terms hereof.

ARTICLE 8. AMENDMENTS: This agreement may be altered, amended or terminated only by a writing signed by all of the Shareholders and the Company.

ARTICLE 9. CONSTRUCTION AND BENEFIT: The Executor, administrator or personal representative of a deceased Shareholder shall execute and deliver any and all documents or legal instruments necessary or desirable to carry out the provisions of this agreement. This agreement shall be binding upon the Shareholders, their heirs, legal representatives, successors or assigns, and upon the Company, its successors or assigns. This agreement shall be governed by the laws of the State of Iowa notwithstanding the fact that one or more of the parties to this

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agreement is now or may become a resident or citizen of a different state.

IN WITNESS WHEREOF, the parties hereunto have executed this agreement the day and date first above written.

THIN AIR INVESTMENTS, INC.

By: Diane M. Winkey
Diane M. Winkey, President
By: Richard J. Witham
Richard J. Witham, Secretary

SHAREHOLDERS

A. Miller Roskamp
A. Miller Roskamp
Donald E. Timmerman
Donald E. Timmerman
Steven A. Winkey
Steven A. Winkey
Diane M. Winkey
Diane M. Winkey
Richard J. Witham
Richard J. Witham
Junean E. Witham
Junean E. Witham

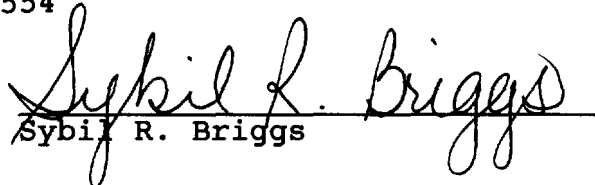
CERTIFICATE OF SERVICE

I, Sybil R. Briggs, hereby certify that I have this 30th day of August, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "SUPPLEMENT TO JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT" to the following:

*The Honorable Joseph Stirmer
Chief Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 224
Washington, D.C. 20554

*James Shook, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, D.C. 20554

Gregg P. Skall, Esq.
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20554


Sybil R. Briggs

*Hand Delivered